



December 9, 1999

Ms. Barbara G. Heptig
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR99-3564

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130107.

The Arlington Police Department (the "department") received a request for records regarding a sexual assault of a named individual and records of all police calls to a specified address. You state that the department found no records regarding the sexual assault. As to the records of the police calls, you claim that this information is excepted from disclosure under section 552.108 of the Government Code and section 552.101 in conjunction with various sections under chapter 411 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted documents contain a confidential report of suspected child abuse. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 261.201(a). The relevant language of that statute reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report;
and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because report number 992330391 relates to an allegation of child abuse, the information is within the scope of section 261.201 of the Family Code. Therefore, the report is confidential pursuant to section 261.201 of the Family Code as encompassed by section 552.101 of the Government Code.¹ See Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the report number 992330391 from disclosure.²

The remaining reports are confidential under section 552.101 of the Government Code in conjunction with common law and constitutional privacy. Section 552.101 protects information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests. The first interest is an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest that implicates constitutional privacy involves matters outside the zones of privacy. To determine whether the constitutional right to privacy applies, this office applies a balancing test, weighing the individual's interest in privacy against the public right to know the information. See Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

Accordingly, under section 552.101 in conjunction with common law and constitutional privacy, information may be withheld from public disclosure in special circumstances. See

¹We assume that the department has not adopted any rules that would permit access to the requested information.

²We note, however, that if the Texas Department of Protective and Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. See Fam. Code § 261.201(f).

Open Records Decision No. 169 (1977). While we consider “special circumstances” to refer to a very narrow set of situations,³ we have held that it includes situations in which release of the information would likely cause someone to face “an imminent threat of physical danger.” Open Records Decision No. 169 at 6 (1997). We have reviewed the requested reports and considered your stated concerns for the safety of the victims and witnesses. We find that there would be an imminent threat of physical danger if the remaining reports were released. Accordingly, under section 552.101 in conjunction with common law and constitutional privacy, the department must withhold the remaining reports.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

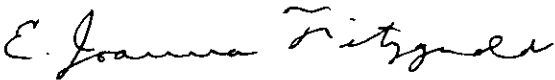
³“Special circumstances” does not include “a generalized and speculative fear of harassment or retribution.” Open Records No. 169 at 6 (1977).

⁴Because section 552.101, in conjunction with section 261.201 as well as common law and constitutional privacy concerns, is dispositive of this matter, we do not address your other arguments.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/nc

Ref: ID# 130107

Encl. Submitted documents

cc: Mr. James L. Coleman, Sr.
509 West 6th #102
Irving, Texas 75060
(w/o enclosures)